PATTERNS OF POWER · THE DOMINION OF NEW ENGLAND

NO MAN WAS OWNER OF A FOOT OF LAND

A companion study · The Dominion of New England · 1684 — 1689 — 1691

Thomas J. Bryan

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held as tested, not revealed

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A case study in the Patterns of Power series.
Primary sources quoted exactly; modern scholarship paraphrased and credited.
Contested figures given as ranges. Nothing reconstructed from memory.

COMPANION STUDY

No Man Was Owner of a Foot of Land

The Dominion of New England, 1684–1691 — a colonial hierarchy that endured three years of a government which had abolished its assembly, taxed it without consent and reopened every title to every acre it held, did nothing whatever about it, and then moved within a fortnight of hearing that the floor had fractured three thousand miles away

Why this case belongs beside the last one

The study of the Revolution of 1688 established that in England no land moved. No confiscations, no attainders, no court of claims; the men who made the Revolution ended it owning exactly what they had owned when it began. That absence was the organising fact of the whole case, because it meant the settlement had to bind its coalition with something other than deeds, and it eventually did — with paper.

Three thousand miles west, at exactly the same moment, the identical operation was run with the variable reversed. In New England land was the *only* thing at stake, because a court in Westminster had cut the string from which every title in Massachusetts hung, and the government that followed drew the obvious conclusion out loud.

So the two cases together make an unusually clean pair. Same crown, same years, same doctrine of title, two colonies of the same legal order — and one political nation with nothing to lose in its deeds and one with everything.

And the pair answers a question the framework asks of every founding and rarely gets a clean reading on: **what actually makes a hierarchy move?**

The New England answer is the one the framework predicts and it is stated, in six words, by the men who moved, on the day they moved, in a document they printed within the week.

What the charter was, and what hung from it

The Massachusetts Bay Company was chartered by Charles I in 1628. It was, on its face, an ordinary joint-stock trading company charter of the sort the crown issued by the dozen — a grant to a corporation of a defined territory, with the usual powers to govern its own members.

Two things were done with it that were not ordinary.

The first is that the charter was physically carried to America. Company charters were normally kept at the company's seat in London, where the crown could reach them; this one went aboard ship in 1630 with the men who held it, and the corporation reconstituted itself on the far side of the Atlantic, out of reach. What had been a commercial instrument became, in practice, the constitution of a self-governing commonwealth: a General Court that made law, levied taxes, ran courts and confined the franchise to members of the Congregational churches.

The second is that the entire landholding of the colony was hung from it. The chain of title ran: the crown, by asserted right of discovery, to the Council for New England in 1620; the Council to the Massachusetts Bay Company; the Company's General Court to the several towns; and the towns to individual householders. That is four links, and every one of them descends from the link above.

The colonists had also, in many cases, bought their land from its Indian occupants, and they thought this strengthened their position. It is worth stopping on that for a moment, honestly and briefly, because the collection's discipline requires it. The order these men were defending had itself been laid over another order within living memory, by purchase where purchase served and by war where it did not; King Philip's War had ended barely a decade before, and had killed a large share of the region's native population. There is no first innocent title here. What follows is not a story of rightful owners menaced by a usurper. It is a story about what happens when a doctrine of derived title is applied by a stronger party to a weaker one — and the men it was applied to had, within their own memory, been the stronger party.

The string is cut

In 1684 the charter was vacated. A writ of *scire facias* issued out of Chancery, judgment went against the corporation, and the instrument that had governed Massachusetts for fifty-four years ceased to exist.

The Declaration the Bostonians printed five years later says exactly what they thought of the procedure, and it is the sharpest thing in the document about English law rather than English liberty:

> *Our Charter was with a most injurious pretence (& scarce that) of Law, Condemned before it was possible for us to appear at Westminster in the legal defence of it*

Whether that is fair is arguable and this study does not need to settle it. What matters is the legal consequence, and the legal consequence was not arguable at all.

Cut the second link in a four-link chain and the two links below it hang from nothing. If the Company's charter was void, the Company's grants to the towns were made without authority; if the towns' titles were void, the towns' grants to householders were void too. Every freehold in Massachusetts — every farm cleared over three generations, every lot in Boston, every common and every woodlot — was, on a strict reading, held by nobody from nobody.

This is precisely the doctrine the collection has been tracking since 1066. **In England every title descends from the crown**, and a descent with a broken link does not reach the ground. A Norman duke established that principle to convert spoil into inheritance; a Tudor king used it to move a quarter of the country; a Convention in 1689 would refuse to concede a conquest because a conquest reopens every title held under the crown.

Here it arrives in a new register. Not as a threat to be avoided, and not as a fiction to be drafted around, but as a demand.

The demand

The Dominion of New England was erected in 1686 — a president and council under Joseph Dudley from May, then a full government under Sir Edmund Andros as Governor-in-Chief from December, with no representative assembly at all, eventually absorbing Massachusetts, New Hampshire, Maine, Plymouth, Rhode Island, Connecticut and, in 1688, New York and the Jerseys.

The Boston Declaration is a partisan document written by the winners on the day they won, and its arithmetic should be discounted accordingly. But on the land question it is unusually specific, unusually legal, and consistent with what the administrative record independently shows. It sets out the chain of title in full — the seal of the Council of Plymouth, the confirmation by Charles I under the great seal of England, the General Court's grants to the towns, and a securing Act of 1684 — and adds Charles II's own proclamation of 1683 promising that no man should receive any prejudice in his freehold or estate. Then:

> *Yet we were every day told, That no man was owner of a Foot of Land in all the Colony.*

And having established the doctrine, the government applied it by three instruments, which are worth naming separately because they do different work.

Writs of intrusion. An action lying against a person occupying land belonging to the crown without title. The Declaration: *Accordingly, Writs of Intrusion began every*

where to be served on People; that after all their sweat and their cost upon their formerly purchased Lands, thought themselves Free holders of what they had. This is the demand made individually, at the householder's door, on the crown's initiative.

Petition by strangers. If the land is the crown's and unoccupied in law, another man may ask for it. The Declaration reports that the governor caused lands belonging to named men to be measured out for his creatures to take possession of, and that the right owners, for pulling up the stakes, passed through molestations enough to tire all the patience in the world; and that several towns had their commons begged by persons, some of them councillors, privately encouraged to do it. That is the demand made competitively, with a rival bidder standing behind it.

And the patent. The remedy offered was to take a fresh royal patent for the land one already occupied, at a fee, with a quitrent reserved. On this the Declaration is at its most precise and its most bitter:

> *They are more than a few, that were by Terrors driven to take Pattents for their Lands at excessive rates, to save them from the next that might Petition for them ... Blanck Pattents were got ready for the rest of us, to be Sold at a Price, that all the Money and Moveables in the Territory could scarce have paid.*

Read that as a legal operation rather than as a grievance and it is a re-sourcing of title, performed wholesale on a settled population, of exactly the kind the collection has watched three times in England — and the mechanism is identical each time. The holder keeps the same ground, the same house, the same neighbours. What changes is where his claim comes from. Before, it came from a Company charter and a town vote; after, it comes from a royal patent issued by this government, and it is defended in this government's courts, and it carries an annual acknowledgment that the land is held **of** the crown.

The quitrents were small. That is not a mitigation; it is the point, and it is where this case makes its contribution to the framework.

The study of 1688 found that in December 1660 the English parliament converted every military tenure into free and common socage and compensated the crown out of an excise on beer — which left the doctrine that all land is held of the crown standing in perfect legal health while removing every payment that ran along it. The result was a foundation nobody paid for and therefore nobody watched, and the argument there was that **defunding a source of title is what eventually makes it moveable.**

Massachusetts is the same operation run backwards. Here a payment is *introduced*, deliberately and at a trivial rate, precisely in order that the doctrine should be felt. A shilling a year on a hundred acres raises nothing worth collecting. What it establishes is

the relation, annually, in writing, in the memory of a man who had believed his farm was simply his.

Stated for the card: a nominal render is not a tax and should not be read as one. Its function is to make a tenure visible. Where a study finds a rent too small to be worth the collecting, it has found an order buying acknowledgment rather than revenue — and the smallness is the evidence, because a ruler who wanted money would have asked for money.

Three years of nothing

Now the part of this case that matters for the framework's account of change, and it must be set out at full weight before the ending is allowed to arrive.

By the winter of 1688 the government of the Dominion had done all of the following to the Massachusetts political nation. Abolished its representative assembly, so that laws and taxes were made by a governor and a council he had named. Levied a colony-wide rate without any assembly's consent. Restricted town meetings, on the standard accounts, to a single meeting a year. Required an oath sworn on the book, which excluded from juries the many who scrupled at it. Imprisoned men without informations laid and without habeas corpus. Brought soldiers from England and quartered them. Given Anglican worship a footing in Boston, and required the town's third church to lend its meeting-house for the purpose. And reopened every title to every acre in the colony.

The doctrine underneath all of it was stated by a member of the council in open court, and the Declaration reports it in words its readers would not have needed explaining:

> *it was a maxim delivered in open Court unto us by one of the Council, that we must not think the Priviledges of English men would follow us to the end of the world*

and, from the same source:

> *the people in New-England were all Slaves and the only difference between them and Slaves is their not being bought and sold*

There was resistance. In August 1687 the town of Ipswich, on the argument that taxation without an assembly was contrary to the rights of Englishmen, refused to name a commissioner to assess the rate. The men who did it were prosecuted, convicted and fined; the Declaration gives the figures as some twenty, some thirty and others fifty

pounds, which in that economy were ruinous sums, and some were imprisoned. Plymouth had its own version.

And that was all. The Declaration says so itself, in a sentence written to establish the writers' loyalty and which establishes something else entirely:

> *We bore all these, and many many more such things, without making any attempt for any Relief; only Mr. Mather purely out of Respect unto the good of his Afflicted Country, undertook a Voyage into England*

Increase Mather went to Whitehall as a lobbyist. He obtained audiences, and promises, and — by his own party's account — a royal undertaking that the governor should be written to. Nothing changed. The Declaration notes, with the flatness of men recording a fact they have thought about a great deal, that *after this, we were injured in those very things, which were complained of.*

That is the entire action of the Massachusetts elite across three years: one prosecution-generating tax refusal by one town, and a clergyman sent to London to ask.

It is exactly what the framework predicts and it should be read without any condescension whatever, because it was correct. These men were not cowards and they were not slow. They were an English colonial hierarchy — landed gentlemen, merchants, magistrates, ministers — and their entire standing derived from an English legal order in which the crown was the source of all title and armed resistance to the crown was treason. They had watched, from a distance of one ocean and no years at all, what had happened to men who rose against a settled government with an intact floor: Monmouth's people had been hanged in batches across five English counties in the autumn of 1685 and eight hundred more sold to the plantations. The remedy available to a hierarchy in that position is to work the metropole, and they worked it, and it did not answer.

A hierarchy does not move against an intact apex because its grievance is large. It moves when the apex stops being intact. The grievance in Massachusetts was as complete as a grievance gets — assembly gone, taxes imposed, juries packed, titles reopened — and it was static for three years, and it produced a lobbyist.

The eighteenth of April, and six words

The news came in the ordinary way, by ship, slowly and against the government's efforts.

The Prince of Orange had landed at Torbay on 5 November 1688. In early April 1689 a man named John Winslow came into Boston from Nevis carrying printed copies of William's Declaration of Reasons — the document quoted at length in the companion study, the one whose Additional Declaration insists the expedition is not a conquest because those who invited it could not make void their own lawful titles. He was arrested for bringing it. The Declaration of 18 April notes, in a parenthesis, that the governor *has taken all imaginable care to keep us all ignorant thereof.*

On the morning of 18 April the militia and the crowd took the town. Andros was seized in the fort; the council of the Dominion was arrested; the frigate in the harbour was secured. Fifteen substantial men signed a note to Andros the same day claiming that they had been *surprized with the Peoples sudden taking of Arms; in the first Motion thereof we were wholly ignorant*, which is the standard letter of a hierarchy establishing deniability and should be read as such. And a long Declaration — probably drafted by Cotton Mather, and evidently not composed in an afternoon — was read from the gallery of the Town House and printed within days.

Its eleventh section is the reason this study exists.

> *We did nothing against these Proceedings, but only cry to our God ... We have been quiet hitherto; and so still we should have been, had not the Great God at this time laid us under a double engagement to do something for our security*

We have been quiet hitherto; and so still we should have been.

The men who had just overthrown the government of New England put it in writing, on the day, that they would have gone on doing nothing. Not that they had been biding their time; not that a plan had matured; that they would still be quiet, had something not happened elsewhere.

And they name what happened:

> *we have understood, (though the Governour has taken all imaginable care to keep us all ignorant thereof) that the Almighty God hath been pleased to prosper the noble undertaking of the Prince of Orange ... in compliance with which Glorious Action, we ought surely to follow the Patterns which the Nobility, Gentry and Commonalty in several parts of the Kingdom have set before us, though they therein have chiefly proposed to prevent what we already endure.*

Three things in that sentence.

They are following a **pattern set by the English hierarchy** — nobility, gentry, commonalty, in that order. They are not innovating; they are doing what their

superiors in the same order have already done, which is what makes it safe and what makes it lawful.

They are acting in **compliance** with it, not in imitation of it. The distinction is legal, and it is why the Declaration's final section is careful to say that the prisoners are held for *what Justice, Orders from his Highness with the Parliament shall direct*, and that *for which Orders we now Humbly wait*. This is not a colonial rebellion. It is a faction of the English political order removing officers of a superseded apex and waiting to be told what to do next by the new one.

And the last clause carries a bitterness that is entirely earned and that no English account of 1688 records: **they rose to prevent what we already endure.** The English gentry moved against the possibility of arbitrary government. The Massachusetts gentry had been living under it for three years, with their assembly gone and their deeds void, and had not moved at all — because the possibility of moving had not existed until the men in England created it.

That is the mechanism, and it is the same mechanism as Salisbury Plain. In November 1688 James II's regiments did not lose a battle; what ended was the credible expectation that they could be used, and the collapse followed. In April 1689 the Dominion's authority did not lose a battle either. What ended was the credible expectation that it could call on a crown to sustain it — and once that expectation was gone, an unarmed and thoroughly law-abiding provincial elite took the government of New England in a morning, having declined to attempt it for three years.

A colonial hierarchy's cost column is not maintained locally. It is maintained by the metropole's floor, and it empties the moment that floor is known to have fractured — not when the fracture happens, but when the news arrives. The Dominion's soldiers were where they had been the week before. What had changed was three thousand miles away, and had been reported.

What they got

The Dominion was dissolved. Connecticut and Rhode Island resumed their old charters. Andros was sent to England in 1690, was not tried, and was subsequently made governor of Virginia — the same treatment James II received in December 1688 and for the same reason, which is that a new order gains nothing by producing a defendant with a case.

Massachusetts did not get its charter back. It got a new one, signed by William and Mary on 7 October 1691, and the terms are worth setting out because they are what the repricing actually bought.

Lost. The Company charter of 1628 was gone for good. The governor would henceforth be appointed by the crown, not elected. The franchise moved from church membership to a property qualification, which ended the Congregational monopoly of political rights. Liberty of conscience was extended to all Protestants, which the colony's founders would have regarded as a defeat. Plymouth and Maine were annexed and disappeared as separate governments.

Kept. A representative assembly, elected, with control of taxation. And the land.

The 1691 charter confirmed titles under previous grants. The confirmation was bounded — on the specialist reading it ran to grantees actually holding at the date of the charter, which had consequences in later litigation over the Bay Colony's own claims and over the Maine patents — and the boundaries mattered enormously to particular families. But the general effect was the one that counted for the thousands of householders who had been served with writs of intrusion three years earlier: the string was spliced. Their deeds ran again.

So the Massachusetts elite came out of the Revolution having permanently surrendered the constitution its grandfathers had crossed an ocean to keep, and having recovered its farms.

It took the deal. Of course it did.

And that is the cleanest single confirmation the collection has of the ranking of bindings. A charter is an instrument of government; a deed is a title in a thing. Offered a choice — and it was, in substance, a choice, negotiated by Mather in London over more than two years — the hierarchy traded the first for the second without much visible agony, and the men who had denounced the vacating of the charter as an injurious pretence of law accepted a royal governor in exchange for quiet possession.

The control case: New York

Six weeks after Boston, the militia of New York seized Fort James and declared for William and Mary. The lieutenant-governor left for England. Jacob Leisler, a wealthy German-born merchant and militia captain, took charge, and his declaration said very nearly what Boston's had said — that as soon as the bearer of orders from the Prince of Orange should show his power, they intended without delay to obey not only the orders but the bearer of them.

Same month. Same act. Same declared loyalty to the same new sovereigns. Same posture of waiting for instruction.

On 16 May 1691 Leisler and his son-in-law Jacob Milborne were hanged and beheaded in New York for levying war against King William. Parliament reversed the attainder in 1695 and restored the estates to the heirs.

The variable is not the conduct. It is the position.

Boston's rising was led by, and immediately claimed by, the men who *were* the colony's hierarchy — the magistrates and ministers of the old charter regime, the class that had governed Massachusetts for two generations and would govern it again, with a signed note establishing that they had been surprised by the people's taking of arms. And it had an agent resident in Whitehall, well connected, with access to the new government, who had spent two years cultivating exactly the people who would decide.

Leisler was a merchant of foreign birth who displaced New York's own governing families rather than leading them, and who had no patron in London at all. When the crown's governor arrived, the men Leisler had pushed aside were on hand to explain what he had been, and he had nobody on the other side of the ocean to say otherwise.

Stated plainly: the same act, performed by a hierarchy with a patron at the metropole, is a restoration; performed by an outsider without one, it is treason. The framework holds that change comes from inside a hierarchy and not from below it, and this pair sharpens the claim by one turn — it must come from the hierarchy that is *connected to the apex that will judge it afterwards*. A provincial elite acting in a colonial order is not free-standing. Its rising is lawful or capital according to who will be speaking for it in the metropolitan capital when the accounting is done, and Massachusetts had Increase Mather in London while New York had nobody.

Reading the Dominion against the framework

Four things, in the order of their usefulness.

The nominal render is a tenure marker, not a tax. Massachusetts is the inverse of the Tenures Abolition Act. In England in 1660 a doctrine of derived title was stripped of its payments and left standing, and the study of 1688 argued that the stripping is what eventually made it moveable, because a proposition that costs nobody anything is a proposition nobody watches. In New England a payment was introduced at a rate too small to be worth collecting, precisely so that the doctrine should be felt annually by men who had forgotten they were tenants. **Where a study meets a rent too small to matter, it should read it as an instrument of acknowledgment and look for what the acknowledgment is establishing.**

A colonial hierarchy's cost column is maintained by the metropole's floor. The Dominion's local force did not change on 18 April 1689 and did not need to. What changed was that a professional army had landed at Torbay five months earlier, the king's regiments had dissolved, and the news had finally got past a governor who was trying to stop it. **A provincial elite prices defection against the metropolitan apex's capacity to punish it, and that price collapses on the arrival of news rather than**

on the occurrence of the event — which means the lag between the two is the most dangerous interval in the life of any distant government, and explains why Andros arrested the man carrying the pamphlet.

And change must come from the hierarchy connected to the judging apex. The framework's rule that structural change comes from fracture inside a hierarchy, from external conquest, or from exhaustion, survives this case intact and gains a rider for colonial orders. Boston and New York performed the same act in the same season, for the same declared reason, and one produced a new charter and the other produced a gallows. The difference was a clergyman in Whitehall.

A charter is traded for a deed whenever the trade is offered. Massachusetts surrendered its elected governor, its church franchise and its fifty-four-year-old constitution, and kept its land, and its political nation regarded the outcome as a deliverance and named it so. That is the collection's ranking of bindings — deed first, everything else after — demonstrated by a whole society choosing under something close to laboratory conditions.

A closing observation, and it is the reason this small case is worth having beside the large one.

The English study found that the political nation of England moved in 1688 against a *possibility*: a Catholic dynasty, a standing army, a dispensing power, a future in which the things that had happened to other people might happen to them. Nothing had yet been taken from any of them. Not one acre had moved.

Three thousand miles away, in the same reign and under the same crown, every one of those possibilities had already been actualised on a population of Englishmen — assembly abolished, taxes imposed without consent, soldiers quartered, juries packed, worship imposed, and every freehold in the colony declared to belong to nobody. And that population, which had the grievance in full and in fact rather than in prospect, did nothing for three years and then rose in a morning as soon as its betters in England had gone first.

Both facts are in the same document. The Bostonians wrote them down themselves, in one sentence, on the day: that they followed the pattern the nobility, gentry and commonalty of England had set — *though they therein have chiefly proposed to prevent what we already endure.*

The arithmetic is on the page. The sum is the reader's.

A note on sources. Quoted exactly from public-domain primary text: *The Declaration, of the Gentlemen, Merchants, and Inhabitants of Boston, and the Countrey Adjacent, April 18th 1689* (Boston, printed by Samuel Green, 1689), at §II on the charter being condemned before it was possible to appear at Westminster; at §V; at §VI

on the maxim delivered in open court concerning the privileges of Englishmen and on the people of New England being all slaves, and on the fines of twenty, thirty and fifty pounds; at §VIII in full on the flaw in the titles, the writs of intrusion, the lands measured out for the governor's creatures, the patents taken by terror, and the blank patents; at §IX on bearing all these things without making any attempt for any relief and on Mather's voyage; at §XI on having been quiet hitherto, on the undertaking of the Prince of Orange, and on following the patterns set by the nobility, gentry and commonalty; and at §XII on waiting for orders from his Highness with the Parliament — text from the Text Creation Partnership transcription of the 1689 printing, which is dedicated to the public domain. The letter of the fifteen signatories to Andros of the same date, at "surprized with the Peoples sudden taking of Arms; in the first Motion thereof we were wholly ignorant", is quoted from the Colonial Society of Massachusetts's reproduction. Leisler's declaration, at "as soon as the bearer of orders from the prince of Orange shall let us see his power", is quoted at second hand from the Historical Society of the New York Courts and should be checked against the original before it is built upon.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the Massachusetts Bay charter of 1628 and its removal to New England; the *scire facias* proceedings and the vacating of the charter in 1684; the establishment of the Dominion under Dudley and then Andros and its successive absorptions; Andros's land policy, the issue of writs of intrusion and the requirement of new patents with quitrents reserved; the restriction of town meetings; the Ipswich tax resistance of August 1687; Increase Mather's mission to England; John Winslow's arrival with the Prince of Orange's Declaration and his arrest; the events of 18 April 1689 and the attribution of the Declaration to Cotton Mather; the resumption of the Connecticut and Rhode Island charters; Andros's return to England without trial and his later appointment to Virginia; the province charter of 7 October 1691, its terms as to the governor, the franchise, toleration and the annexation of Plymouth and Maine, and the bounded language of its confirmation of prior titles as discussed in the Adams Papers editorial apparatus; and Leisler's Rebellion, the trial and execution of 16 May 1691 and the parliamentary reversal of the attainder in 1695.

Contested and uncertain points are flagged, and this being a short study there are more than usual. **The Boston Declaration is a partisan document written by the winning party on the day of its victory and printed for circulation in London**, and at least one scholarly account states plainly that it exaggerates many of the grievances. It is used here as the best available statement of what the Massachusetts hierarchy wished to be understood as its reasons — which is exactly what this study

needs from it — and not as a neutral account of Andros's administration. Where it is quoted on the land question the substance is corroborated by the administrative record; where it is quoted on the Indian war, the Popish Plot and the conduct of the council it is not, and none of that material is relied on here. The scale of the quitrents demanded is described as nominal on the standard accounts and no figures are given, which is a real gap: the argument about the nominal render being a tenure marker would be substantially strengthened or weakened by the actual rates, and those should be established from the patents themselves before this finding is carried into the framework. The restriction of town meetings to one a year, the imposition of Anglican worship on the Third Church, and the attribution of the Declaration to Cotton Mather are all given on the standard accounts and are not independently verified here. The characterisation of Increase Mather's presence in London as the operative difference between the Boston and New York outcomes is this study's structural reading and not a claim that any contemporary made in those terms; the factional politics of New York — Dutch against English, and the families Leisler displaced — carried at least as much weight and are treated too briefly. Every load-bearing fact in this study is to be re-verified against a primary or standard source before it is built upon.